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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/922,263	09/02/1997	ROBERT J. CROWLEY	BSC011	1365

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 12/13/2001

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire -3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION

1. Claims 1,4-12,14,15,17,20-30,32-44,47-50+52-63 are pending in the application.
Of the above, claims 1,4-12,14,15,17,20-30,32-44,47-50,52,53, are withdrawn from consideration.
2. Claims 2,3,13,16,18,19,31,45,46,51 have been cancelled.
3. Claims _____ are allowed.
4. Claims 54-59 are rejected.
5. Claims _____ are objected to.
6. Claims _____ are subject to restriction or election requirement.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).
12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. Other

EXAMINER'S ACTION

Art Unit: 3739

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 54-59, drawn to an interventional device, classified in class 607, subclass 88.
- II. Claims 1, 4-12, 14, 15, 17, 20-30, 32-44, 47-50, 52, 53 and 60-63, drawn to a method of generating light, classified in class 604, subclass 20.

The inventions are distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the device could be used in a method of photographing an internal body cavity.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Claims 1, 4-12, 14, 15, 17, 20-30, 32-44, 47-50, 52, 53, and 60-63 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

Filed October 30, 1998.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 54-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takayama et al in combination with Champelon et al ('526) and Yock. Takayama et al teach a device as claimed except for the specific recitation that it be placed in the body. Champelon et al teach the equivalence of applicators for extracorporeal and intracorporeal use. Yock teaches a piezoelectric element translatable in a catheter. It would have been obvious to the artisan of ordinary skill to configure the device of Takayama et al for intracorporeal use, by employing the pressure wave generator of Champelon et al ('526) since this lends itself to ^a intracorporeal application, as taught by Champelon et al ('526) and to use the particular, pressure generating crystal and various beam directing elements or other housing modifications, since these are well known in the art, official notice of which has already been taken, it is noted that Champelon et al ('526)

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refers to U.S. Patent 5,474,071 for the intracavity device which patent discloses a probe which is insertable a variable distance, but makes no mention of a stationary sheath, however, it would have been obvious to the artisan of ordinary skill employ a sheath in which the piezoelectric device is relatively movable, since this is not critical and would prevent the tissue from moving as the probe is moved, thus producing a device such as claimed.

The examiner regrets any misunderstanding that may have arisen during the interview. It was the examiner's impression that since the initial apparatus claims were not limited to any particular application, and since the method claims had originally been restricted out on this basis, that applicants statement that method claims would be submitted implied that the apparatus claims would be cancelled. Since the original election was of the apparatus claims; since the application has been filed as a continuation; and since the apparatus claims are argued in the response, the apparatus claims have been treated on the merits.

Applicant's arguments with respect to claims 54-59 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215.


DAVID M. SHAY
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GROUP 330